IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 60 OF 2007
WITH
CIVIL APPLICATION NO. 91 OF 2007

Kantilal Shah Gaji Shah. ... Appellant.

V/s.

Municipal Corportion of
Greater Bombay. ... Respondent.

Ms.Geeta Shastri i/b. M/s.Khilnani & Co.
for the appellant.

Mrs.Geeta Joglekar for the respondent.

CORAM: A.M.KHANWILKAR, J.

DATED: 23rd January 2007.

P.C.:

. Heard counsel for the parties.

2. The view taken by the trial Court, in my opinion, is a possible view. No interference is warranted with the ultimate conclusion reached by the trial Court, dismissing the notice of motion.

3. It is not in dispute that besides two documents, namely, agreement dated 20th September 1958 and rent receipts issued by the landlord in respect of shop No.1-A, there is no other document to substantiate the fact that the suit structure was in existence prior to the datum line. No municipal

tax receipt or licence issued under the Shops and Establishment Act has been produced to corroborate the position. Reliance placed on the private documents to claim that the structure was in existence prior to datum line is unacceptable. If the suit premises were to be in existence prior to the datum line i.e. prior to 1962, the same would have been assessed at the relevant time and, in any case, till the appellant was put in possession thereof. The licence issued by the Corporation or for that matter the electricity bill, which are of recent origin and much after the datum line i.e. 1st April 1962, will be of no avail to establish the case about the existence of the suit premises prior to datum line.

4. Thus understood, the approach of the trial Court that the suit structure was not in existence prior to the datum line cannot be said to erroneous or manifestly wrong. The fact that the landlord has been made party to the suit will not lessen the burden of the plaintiff to establish the claim about the existence of the suit premises prior to the datum line. There is no satisfactory evidence muchless to take a *prima facie* view in favour of the plaintiff. If so, the Court below has rightly rejected prayer for interim relief. Hence dismissed.

5. In view of this order, civil application is also dismissed.

6. At this stage, counsel for the appellant submits that the appellant be given liberty to approach the Corporation for regularisation of the suit premises. Counsel for the Corporation submits that question of regularisation of such premises will not arise as the said structure is outside the building line and was not in existence prior to datum line. Be that as it may, if the application is made by the appellant for regularisation, the competent authority may consider the same on its own merits.

(A.M.KHANWILKAR, J.)